(1) Supreme Court, U.S.
FILED

991004 DEC 13 1999

OFFICE OF THE CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

JOHN ERWIN MICHELFELDER
Petitioner,

vs.

THOMAS JEFFERSON UNIVERSITY ET. AL.
Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO
SUPREME COURT OF PENNSYLVANIA

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4/6pp

QUESTION(S) PRESENTED

Petitioner respectfully requests this court to review the following questions concerning this petition: (1) Whether the Respondent business practices are ethical and legal by virtue of a ambiguous statement of policy stated in a student catalog. (2) Whether the respondents/defendants discriminated student based on sex, national origin and/or religion. (3) Whether the this Petitioner's case demands review where fact finding access to discovery was Constitutionally violated by lower court(s).

LIST OF PARTIES

The additional defendants listed and inclusive, represented by the Thomas Jefferson University Office of Counsel are:

Dr. Cyrus Whaley
Dr. Reva Curry
Dr. YunQui Wu
Ms. Susan Reynolds
Dr. Lawrence Abrams

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Petition for Writ of Certiorari to the Supreme Court of Pennsylvania

I, John Erwin Michelfelder, the Petitioner, respectfully petitions for a Writ of Certiorari to review the judgement of the Supreme Court of Pennsylvania.

Opinions/Orders Below

The Order of the Supreme Court of Pennsylvania is listed in Appendix. No corresponding opinion was submitted by this court. The Order and Opinion of the Superior Court of Pennsylvania is listed in Appendix B. The Court of Common Pleas of Philadelphia County's Order and Opinion are listed as separate in Appendix C and C (a).

Jurisdiction

The Supreme Court of Pennsylvania entered its judgement on September 13, 1999. The Jurisdiction of this Court is invoked under the United States Constitutional Amendment 14 Section 1.

Statutory and Constitutional Provisions Involved

Section 6 of Article 1 of the Constitution of Pennsylvania reserves the right trial by jury in a civil case. Section 11 of Article I that the courts shall be open and have remedy by due course of law.

Article III Sections 1 & 2 of the U.S. Constitution provides that Supreme Court is the "Judicial power shall extend to all cases in law, and equity, arising under this Constitution..."

STATEMENT OF THE CASE 1

Petitioner is a life-long resident of Pennsylvania who was in pursuit of a career endeavor in the field of Diagnostic Imaging at Thomas Jefferson University; College of Allied Health Sciences. Petitioner's entrance into the 28-month program of study began in Fall of 1993. Upon completion he was to receive a bachelor' degree with dual curriculum experience and study in Radiography and Sonography to which he would have taken board certification in each. The program required a student to stay in acceptable academic standing not to obtain two D's in the same academic year or be dismissed from the program. This was made know to students on or about September 15, 1993 however, under the traditional grading structure of: 100-90 =A, 89-80=B, ...60=D, below 60=F. On or about August 5, 1994 approximately mid-way through program, students received a memo (dated June 24, 1994) from Cyrus Whaley that new restrictive grading structure of 100-93=A, 92.9-85=B, 84.9-77=C, 76-70=D and below 70=F, was to take affect beginning in the fall 1994 semester. Students and Student representatives fought this vehemetly upon their semester break return, but to no avail. This new grading structure was to have allegedly worked against Petitioner. On Thursday, January 5th, 1995(classes scheduled to start Monday, Janaury 9th, 1995) Petitioner was surprised to have received a certified letter from Cyrus Whaley that he was dismissed from the program for obtaining three D's, even though he had never received his report progress card yet.

Petitioner up that point had maintained a "B" average. Petitioner shocked of his failure and dismissal with out

receiving any contact over semester break by faculty, demanded tuition be refunded. He was contacted by letter from Dean of College of Allied Sciences, Lawrence Abrams (acting behalf of President , Paul Brucker, M.D.) who affirmed the Department of Diagnostic's decision to dismiss Petitioner according memo sent in Summer of 1994 of the structural change and that the grading structure change was within the College's right according to the statement on the inside cover of the 1991-1993 College of Allied Health Sciences Catalog, which reads as follows:

> "The College of Allied Health Sciences of Thomas Jefferson University reserves the right to amend any regulations, fees, conditions and courses described herein as circumstances may require without prior notice to persons who might thereby affected. The provisions of this catalog are not to be viewed as an irrevocable contract between the College and the students."

First of all it must be established that where services and monies are exchanged a "legal relationship existing between a student and college/ university is contractual in nature and is true for both public and private institutions.(1) Materials made available to any student or applicant such as "catalogues, bulletins, circulars and regulations become part of the contract."(2) Most objections in

1. Russell v. Salve Regina College, 649 F. Supp. 391(D. R.I. 1986) aff'd, 890 F.2d 484 (1st Cir. 1989)

2. Zumbrun v. University of S.Cal., 25 Cal. App. 3d 1 10 101 Cal. Rptr. 499, 504 (1972)

these contract disputes will primarily center on the catalog or bulletin.(3) It is well established through a "Long line of cases that the student-institution is contractual in nature."(4).

The core of the issue here centers on the Constitutionality of the statement on inside cover of student catalog in question at not only at the university attended by the petitioner, but also through out the country at large at post secondary educational/higher or specialized institutions of learning ;whether they be public or private colleges, universities, trade, vocational, etc .What specifically is contested, is the language of such statement. The statement itself is viewed as ambiguous since provisions of the statement are unclear. First of all the statement falls on what is termed as "unconscionable." The term doctrine of unconscionability, has been accepted into general contract law. The issues arises where a student is not part of the formation or drafting of the contract and is an unequal partner in the bargaining position. By and large the ambiguous language of statement questions the language as "self serving" and the good faith of school or university. The Eight District Court of Appeals in in its analysis of a university student handbook raised disputes implicit of a typical case of unconscionability stating "the contract is on a printed form prepared by one party, and adhered to by another who has little or no bargaining power, ambiguities must be construed against the drafting party."(5) Under federal rule that judicial intervention is required or allowed is where the language of the contract is ambiguous. Cases have that ambuiguity

3. Peretti v. Montana, 464 F. Supp. 784 (D. Mont. 1979)
4. Corso v. Creighton Univ., 731 F. 2d 529 (8th Cir. 1984)
5. Corso v. Creighton Univ., 731 F. 2d 529, 533 (8th Cir. 1984)

where the terms "are reasonably susceptable to more then one interpretation,"(6) or "where the phraseology can support reasonable differences of opinion as to the meaning of the words employed and the obligations undertaken."(7)

The grading structure is the foundation for which the evaluation process of academic institution is based. The defendants claim to have had the right to change the grading structure approximately mid-way through the petitioner's course of study based upon the statement on the inside cover of the college catalog. However , the language is ambiguous and makes no mention to reserving the right to take such an extreme measure. The statement mentions the college "reserves the right to amend any regulations, fees, conditions and courses described herein as circumstances may require."First, it must be established that , what were the circumstances that were the cause to create this alteration? The college had never provided one. They would had had to claim that they were academically deficient or that the change had an ulterior motive.

The majority of the students or prospective applicants entering into the allied health field or college itself are primarily young adults. Many are just out of high school, tend to be less mature in experiences. Concerned with getting on with their career goals/endeavors they are by and large more naive and unsuspecting of fine print and ambiguous language of academic institutions which have prospered from their reputations in the past. However, unfortunately it is of this age category such types of statements printed by defendants and other institutions tend to prey upon, which is by and large

6. Burger King Corp v. Horn & Harndart Co; (CA2 NY) 893 F2d 525
7. Fashion House ,Inc v. K Mart Corp. 892 F2d 1076

UnConstitutional. What should take precedence is what is to be construed as contracts of integrity. The leading characteristics of all drafting of contracts are common sense and good faith.(8)

It should be held to the understanding of a reasonable person's interpretation with what is normally to be expected during the running of a contract. Contracts must be of reasonable construction according to the party who executes them if there is a basis or intention to understood from their language. Furthermore, they should be explained prior to execution of them if the party who is to be bound to them has perfect knowledge of the intent or possible deviations that one should can expect. This was not the case at Thomas Jefferson University. This statement was never read, elaborated nor even mentioned to the petitioner or students. In essence the petitioner was approximately half-way through his program of study when the College of Allied Health Sciences, Department of Diagnostic Imaging chose to alter the grading structure. They gave no prior notice to students of their consideration of such a change. Without warning in early August of 1994, (just prior to final exam week, followed by a three week semester break) they issued a memo, dated June 24, 1994, that a grading change is to take place in the upcoming semester(fall of 1994). No corresponding reason as to the nature or justification as to why was ever mention. The petitioner as well as students upon their return from semester recess had disputed this change. Student representatives had numerous meetings with Department faculty but to no avail. It was even implied to any student who was so dissatisfied that they were welcome to transfer to another institution. The

8. Paisley v. Lucas, 346 Mo 827, 143 SW2d 262

student reaction to such a change obviously indicated this was outside the boundary of what is to be reasonably expected or considered during their enrollment at this institution. The statement nor the College itself makes no mention of the right to make such an unexpected drastic , sudden change. In essence, this change not only prejudiced the petitioner, but also the students who grades would be used as credentials to prospective employers.

In the statement on the inside cover of the student handbook catalog is stated" the provisions of this catalog are not to be regarded as an irrevocable contract between the College and the student." In this statement the College admits that a contract exists but is "not to be regarded as an irrevocable" one. Where language is doubtful the contract must be more strongly argued against the party who is responsible for it's language.(9) By the fact that the defendants claim that it is with in their right to make such a change then the rules and laws of ambiguity, reasonableness and good faith are do not apply to them. According to this statement and defendant reasoning what would stop the University from changing the grading structure from 100-98=A, 97-95=B, 94-92=C, 91-90=D, and 89 and below=F? Though it may seem extreme based upon this example according to the statement and defendant's position there 's really nothing to stop them from doing such. Unfortunately, it is UnConstitutional because it goes against what is viewed ethical and legally binding the provision prohibiting impairment of contracts, designed to protect private rights is of a Constitutional provision.(10)

9. Grace v. American Cent. Ins. Co., 109 US 278, 27 L Ed 932,3 S Ct
10. U.S. Constitution, Art. 10, Sec. 1

Additionally, the statement and practices employed by the University violates Pennsylvania Consumer Protection law as well, which establishes a "laundry list" which is the "catch all" that prohibits "engaging any other fraudulent fraudulent conduct which creates the likelihood of confusion or of misunderstanding."(11) Furthermore, Thomas Jefferson University adheres to the catalog in citing guideline on pages where student conduct and academic evaluations are listed but when it suited them to alter the grading structure they reverted back to the statement on the inside of the catalog, which they believe allegedly sets them free. For obvious reasons it is unethical. However, educational institutions are covered under Consumer Protection Law since their business is the sale of services.(12)

Thomas Jefferson University like most of the country's colleges, universities has been in existence for many years. Thomas Jefferson University has operated since 1824 and in all that time have come across every type of academic situation numerous times. Therefore, there is no mystery, nor should it be kept secret as to the specifics and changes as reasonably intelligent and unsuspecting prospective student should be informed of; regarding possible changes during the course of his or her academic endeavor at the university. Thomas Jefferson University (as with many other educational institutions) has published a student college catalog that is over 280 pages . It covers every detail from "Academic Credit" to "Withdrawal from the College", however, it falls short of going "the extra mile" with an additional few pages that should explain clear and concise information regarding "the right to amend any regulations, fees, conditions and courses

11. Pa CPL ; 73 PS 201-204(4) (xvii)
12. Pa CPL ; 73 PS T 2.04(7)

described herein as circumstances may require without prior notice to persons who might thereby be affected." The policy of the university described and stated in the college catalog on the inside cover had one purpose: and that is to give the college a significant ,unequal bargaining edge. There is no reason why a college can not describe its catalog statements or policies in clear and concise language so as to indicate that they are acting in good faith. The petitioner through his own research and interviews by phone found altering a grade structure approximately half-way through a course of study in other colleges and universities was unheard of. However, through further investigation, facts and actions by Thomas Jefferson faculty it became clear that the motive to alter a grading structure was just one of other actions taken to dismiss the Petitioner from the program of study because he was a white-Catholic male with traditional values who does not believe in abortion of which are carried out at Thomas Jefferson University Hospital.

The second issue(or question for review) concern Constitutionality and Civil rights regarding the behavior and actions the petitioner was subjected during his last semester and thereafter also, by faculty and/or representatives of the university. In fact, through further investigation it became clear that the motive for the change in structure is related to the second issue.

During the orientation procedure at Thomas Jefferson University which was approximately September 1 & 2 of 1993, students are required to take a personal questionnaire. On this questionnaire are political, social and personal questions regarding rights, abortion, dating, ect,. Though the students are told these are confidential and that the are not required to put their name on them ,

they are, however, asked to put their social security number on the form. From this questionnaire the University has personal information(or file) on each student's political, social, personal, religious views etc. From this questionnaire the University can deem who is or is not within the ideology of their views. From these views with ambiguous statement on the inside cover the University can create or alter structural changes or others to create situations or disquised to eliminate/dismiss those from their program for whatever reasons they feel fits. This is what had happen to the petitioner as it becomes more apparent in this petition and why it needs to become law that educational institutions be required to list specific and concise guidelines/boundaries to protect the unsuspecting student/consumer. This would guard against false representation or description whether it be goods or services. (13)

For the fall 1994 semester the university had made several changes. Besides unethical altering a grading structure, they rose the tuition, but also replaced a physics professor with a new professor who had never taught at an American class much less at a university level. This new professor was never put on the new roster. Dr. Wu Though enthusiastic, however, was rather ineffective due her lack of experience. This was negligence on the part of the University.

While in conference with sonography professor Ms Susan Reynolds, petitioner had mentioned the injustice of the unethical grade structure change which her reply was that it was very political here and that one must go along to get along. In addition, petitioner (who was a pro-life Catholic) was inquiring to Ms. Reynolds about his moral

13. U.S.C. S 1125(a)

dilemma in gynecology ultrasound in the upcoming clinical semester, of the possibility of performing an ultrasound on an woman considering an abortion. In that, petitioner suggested that he should speak to his priest first to see if performing an ultrasound implicates him as an accessory in religious/spiritual sense. Ms. Reynolds suggested petitioner should talk to his priest but firmly stated to petitioner that if he was given passage that he is to never suggest, recommend or give advice in anyway talking the woman out of her decision. From that point on petitioner was exposed to a hostile school environment

Dr. Reva Curry who was the petitioners's ultrasound professor as well as ultrasound department head had denied petitioner equal ultrasound practice scanning time for preparation to take his final exam. Dr, Curry along with other faculty were cold and created a hostile work environment that violates the Civil Rights Act of 1964. (14)

Through investigation it became obvious that the petitioner was to be maliciously eliminated from the program. In the petitioners class, the maximum number of students permitted by contact was 37, of which was at capacity in the fall of 1994. However, well before the conclusion of the semester a clinical roster for the upcoming Spring 1995 had shown 38 students. This was premature, especially if every student would have passed. It seemed obvious that someone had to be dismissed from the program if this were to be possible.

The petitioners and his class finished up their semester, took their exams and prepared for the holiday season. On Thursday , January 5th, 1995 the petitioner received a

14. U.S.C.A. S 2000et

certified letter from Dr, Cyrus Whaley, stating to the plaintiff he had been dismissed for academic insufficiency. This letter came just 2 business days before classes were to resume, which was Monday, January 9th, 1995. Petitioner was even denied to sit for x-ray board certification by Dr. Whaley.

The petitioner had contacted the President of the University, Paul Brucker, M.D. by letter concerning his unethical dismissal, asking for his tuition be refunded or would pursue litigation. Dr. Brucker referred the letter to Lawrence Abrams, Ed.D , dean of the College of Allied Health Sciences who affirmed the College's decision in at least two letters.

On May 20th, 1996 the petitioner filed suit in trespass in pro se in the Court of Common Pleas of Philadelphia. Petitioner had to deal with additional injustice in the Pennsylvania Civil Judicial courts because of his "pro se" status.

Petitioner's claim in trespass was further tainted by Court of Common Pleas Judge Albert Sheppard Jr's bias against the plaintiff. Plaintiff was denied much additional fact finding confirmation because defendant's were not compelled to answer discovery matter. While in motion's court on June 10th, 1997, which plaintiff filed because of defendant counsel refusal to answer interrogatories in its entirety because of the number Judge Sheppard order defendant to answer interrogatories. Because defendants had opposed to answering most of the interrogatories, Judge Sheppard ordered the plaintiff to state in writing the reason or relevance to his case as to why he required such interrogatory answered and that the he (judge) would rule on the relevance of those he felt were necessary. The deadline for discovery was July 7th, 1997. Defendant

counsel still had not answered, Therefore it was necessary for plaintiff to file to compel answer to interrogatory again on July 1st, 1997. In motions court on July 1st, 1997, Plaintiff was hand delivered answers to interrogatory by defendant counsel, Kathleen Perillo,: of which most were not answered directly or objected to. On or about July 2, 1997, plaintiff had done just what the judge had ordered. However, the judge had never followed through on his order. In fact, on September 23, 1997, he violated his own order denying plaintiff' 's motion. Judge Sheppard the presiding judge in this matter had not attended either settlement conferences. On October 14, 1997 in settlement conference, Plaintiff had secured a trial date. On October 31 st, 1997 , Judge Albert Sheppard granted a summary judgement for the defendant, though conspicuously crossing out in marker in which he failed to commit that plaintiff that had failed to produce evidence or genuine issues of material fact. (App C.) However, after six months later Judge Sheppard had submitted an opinion (May 6, 1998) to the Superior Court of Pennsylvania in response to plaintiff's appeal which contradicted his order of October 31, 1997. (App C(a)) These actions had constituted a violation of Plaintiffs Constitutional right.(15)

The plaintiff in his appeal to the Superior had not faired any better. There opinion to plaintiff was also indicative of a very subjected nature, one with carried a level of bias also.(App B) There is no misunderstanding that the opinion of the Superior Court reeked with prejudice. While in oral argument October 23, 1998, Defendant counsel, Alan Kelly, was asked by judge of the panel as to why plaintiff was never contacted over semester break by

15. U.S. Constitution; Bill of Rights, Art .14 sec 1.

faculty if he was failing. Defendant counsel replied that they did not want this type of student in their school; obviously indicative of a prejudice existed. Plaintiff filed a motion for Reconsideration but was denied. (App B.a)

Through interrogatories, plaintiff inquired as to the relationship of the new 38 th student to the Jefferson community, whether or not he was of relative, kinship etc. This interrogative was also objected to and never answered. Also, in addition of not being compelled to answer interrogatories, defendant counsel could only secure only one of the defendants' signature.

Finally, Plaintiff appealed to the Supreme Court Of Pennsylvania on or about March 9th, 1999. He received a an Order of September 13th, 1999 denying his appeal without any corresponding opinion for the decision.(App A) The Supreme Court of Pennsylvania as well as the Superior Court of Pennsylvania overlooked or ignored the fact that the civil rights of the Petitioner were violated in the lower court as well as the by the defendant. Finally, the petitioner has no other recourse but appeal to the Supreme Court of the United States in hope that justice will take precedence and that a bill be passed into law that educational institutions of higher learning be prohibited from such ambiguous, misleading, deceptive statements as printed by the defendants in their student handbook/ catalog; in that they print concise and specific guidelines.

The lower courts admit in opinion the University "change the grading structure." They also mistaking assume plaintiff was not dismissed from the college: the petitioner had obtained a B.A.. His purpose was to be educated and trained in Diagnostic Imaging only.

REASONS FOR GRANTING THE PETITION

The argument here presented by the petitioner concerns a complaint that is of National concern to which higher institutions of education have long been guilty of and permitted to Unconstitutionally proceed with immunity the ambiguous statements of policies that are non-committal in nature and primarily advantageous in bargain. Such statements published by the institutions, are argued by the petitioner against what is viewed as lacking in trust and good faith. In that, schools of higher learning particularly the one in question have claimed to be non bounded to their catalogs and reserve the right to "amend" them even though there are Laws contain with in.

The petitioner seeks not to ask the court to intervene to administer in internal educational matters of expertise to which the court are not expert anymore then he would ask the court to intervene in the internal matters of car manufacture of how to design a car. However, but since the former and the latter operate both as businesses, whether they sell a service or a good; he asks the court to pass judgement on the business policies, practices and actions of such and the motives that determine them. In this argument the Petitioner asks to review the actions of the University and those employed in dismissing the Petitioner from the educational facility, whether his civil rights were violated premeditated by discriminatory and prejudicial motives facilitated/shrouded by a catalog statement. In essence, any unsuspecting student is vulnerable. The Petitioner believes without reservation and through Defendant's actions that such was the case.

Many students as is the petitioner, pay for their

education at the university with federal, state, personal loans and savings. They alter their lifestyles, make personal sacrifices and go in debt for years. These students are primarily(as mentioned earlier) young unsuspecting adults to which the university in question (along with many other) prey upon. However, they are deserving of legal protection and this can only happen by the Supreme Court of the United States passing a law protecting them such malicious and unethical acts to which the petitioner was subjected to.

This matter warrants Granting a petition for review due to the violations of Constitution rights of the petitioner in the Pennsylvania Civil Judicial process.(U.S.C.A Sec VII).

CONCLUSION

The petitioner who is not legally trained however felt such so strong about such injustice he felt compelled to to bring this matter this far and prays that you will judge his petition in a most favorable light and take into the facts and circumstances he has had to endure. The petitioner firmly believes in his convictions and hopes that this court will set the example to protect individuals of higher institutions of learning not only as students but consumers as well .Based upon the petition presented:

The petition for writ should be granted.

Respectfully Submitted,

John Erwin Michelfelder

John Erwin Michelfelder

Date: 12/11/98

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

JOHN MICHELFELDER,	:No. 1122E.D. Alloc. Dkt. 1999
	:
Petitioner	:Petition for Allowance of
	:Appeal from the Order of the
v.	:Superior Court
	:
	:
THOMAS JEFFERSON	:
UNIVERSITY AND CYRUS	:
WHALEY, DR. REVA	:
CURRY, DR. WU AND MS.	:
SUSAN REYNOLDS AND DR:	
LAWRENCE ABRAMS, ED.	:
D., DEAN	:

Respondents

ORDER

PER CURIAM:

AND NOW, this 13th day of September, 1999, the Petition for Allowance of Appeal is hereby **DENIED.**

TRUE COPY FROM RECORD

Attest: SEP 13 1999
"s/_____"
Patricia Johnson, Chief Clerk
Supreme Court of Pennsylvania
Eastern District

" J. A46030/98

John Michelfelder	:	**In The Superior Court**
Appelant	:	**of Pennsylvania**
	:	
v.	:	
	:	
Thomas Jefferson University	:	
and Dr, Cyrus Whaley and Dr:		
Reva Curry and Dr. Wu and	:	
Ms. Susan Reynolds and Dr.	:	
Lawrence Abrams, Ed.D,Dean	:	**No. 4990 Phila. 1997**
Appellees		

Appeal from the Order dated October 31, 1997, docketed November 3, 1997, in the Court of Common Pleas of Philadelphia County, Civil, at No. Mat Term, 1996, 1893.

Before: Popovich and Hudock, JJ., and Cerone, P.J.E.

Judgement

ON CONSIDERATION WHEREOF, It is now ordered and Adjudged by this Court that the appeal from the ORDER of the Court of Common Pleas of Philadelphia County be, and is hereby, Quashed.

By the Court

" S/_____ "
PROTHONOTARY

Dated: December 4, 1998

App. B

J.A46030/98

JOHN MICHELFELDER,	**:**	**IN THE SUPERIOR COURT**
Appellant	**:**	**OF PENNSYVANIA**
	:	
v.	**:**	
	:	
THOMAS JEFFERSON	**:**	
UNIVERSITY and DR.	**:**	
CYRUS WHALEY and DR.	**:**	
REVA CURRY and DR. WU:		
and MS. SUSAN	**:**	
REYNOLDS and DR.	**:**	
LAWRENCE ABRAMS, ED.:		
D, DEAN	**:**	
Appellees	**:**	**No. 4990 Philadelphia 1997**

Appeal from the Order dated October 31, 1997, docketed November 3, 1997, in the Court of Common Pleas of Philadelphia County, Civil, at No. May Term, 1996, 1893.

BEFORE: POPOVICH and HUDOCK,JJ.,and CERONE,P.J.E
MEMORANDUM: **FILED DEC 04 1998**

John Erwin Michelfelder appeals pro se from the order that granted summary judgement, in favor of the Appellees. Because of the substantial defects in his brief, we quash this appeal.

Michelfelder was admitted to Thomas Jefferson University College of Allied Health Sciences, Department of Diagnostic Imaging, Multicompetency Program(Thomas Jefferson) beginning in the fall of 1993. Michelfelder remained a student for three semesters. During this time, the Diagnostic Imaginprogram required that a student not receive two grades of "D" or lower within the same academic year. If a student received two or more "D" grades, he or she would be required to withdraw from the Diagnostic Imaging program. This requirement was sent forth in the Thomas Jefferson catalog that

each student received upon admission.

Prior to commencement of the Fall 1994 term at Thomas Jefferson, the Department of Diagnostic Imaging changed its grading structure. Beginning with the Fall 1994 term, a student needed to receive a minimum score of 77 percent in order to maintain a grade "C". "D" grades were given for attainment in the 70 to 76.9 percent change. Michelfelder and all the students in the program received notice of this change in the grading system both individually by mail-before classes began and through syllabus dispensed in each course of the program.

Michelfelder received three "D" grades in the Fall 1994 semester. Accordingly, he was asked to withdraw from the Diagnostic Imaging program., although he was not dismissed from the college. Instead, he wrote to the president of Thomas Jefferson requesting a refund of all the tuition money and related expenses that he had incurred during the year and a half that he spent in the program. The dean of the college suggested to Michelfelder that he might re-enroll in the program, but declined to give him a refund.

Michelfelder filed a pro se complaint on May 20, 1996. The Appellees responded by filing a motion for summary judgement, which the trial court granted. This pro se appeal followed.

Preliminary, we note that while we are willing to liberally construe materials filed by a pro se litigant, Michelfelder's pro se status does not entitle him to any particular advantage because he lacks legal training.

Triffin v. Jansesen, 626 A.2d 571, 573 (Pa Super. 1993); **O'Neill v. Checker Motors Corp.,** 567 A.2d 680, 682 (Pa. Super. 1989). We will not act as Michelfelder's attorney, **Commonwealth v. LaCava,** 542 Pa. 160, 188, 666 A.2d 221, 235 (1995) (citing Pa.R.A.P. 2119(a)).

Michelfelder's brief violates several of the Pennsylvania Rules of Appellate Procedure in both format and substance, including Rule 2114 (Statement of Jurisdiction), Rule 2116 (Statement of Questions Involved), Rule 2117 (Statement of the Case), Rule 2118 (Summary of Argument) and Rule 3519 (Statement of the Scope and Standard Review). In this case, the failure to comply with our rules is so substantial that meaningful appellate review is precluded.

Compliance with the Pennsylvania Rules of Appellate Procedure is **mandatory**, and Rule 2101 sets forth the consequences of non-compliance

> **Rule 2101. CONFORMANCE WITH REQIUREMENT**
>
> Briefs and reproduced recordsa shall conform in all materials respects with the requirements of these rules as nearly as the circumstances of the particular case will admit, otherwise they may be suppressed, and, **if the defects are in the brief or reproduced record of the appellant are substantial, the appeal or other matter may be quashed or dismissed.** [Emphasis added.]

Thus, blatant violations of the Rules of Appellate Procedure may result in the dismissal of an appeal. **See Rumbaugh v. Beck,** 601 A.2d 319 (Pa. Super. 1991).

Michelfelder argues that he spent both time and money in his coursework in the Diagnostic Imaging program and that he is not able to obtain employment as a result of his efforts. He apparently asserts that Thomas Jefferson breeched a contract with himby ordering his dismissal from the Diagnostic Imaging program. Importantly, however, our review of the record does not reveal any such contract. Neither does Michelfelder substantiate his claim of a contract with references to evidence of record or support his contentions with citations to relevant case law, both direct violations of Rule 2119. Moreover, Michelfelder's oral argument did not serve to enlighten the panel on these matters.

It is not a court's function to become an advocate for an appellant. **See generally Delesandro v. Unemployment Compensation Bd. Of Review,** 625 A.2d 1291 (Pa. Cmwlth. 1993). When issues are not properly raised or developed in briefs, and when the briefs are wholly inadequate to oresent issues for review, this Court may decline to consider the merits of the case. **Id.** Here, because the defects in Michelfelder's brief are so substantial as to preclude meaningful appellate review, we quash this appeal.

Appeal quashed.

Kathleen M. Perillo, Esquire
Office of University Counsel Attorney for Defendants
THOMAS JEFFERSON UNIVERSITY
1020 Walnut Street
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I.D. #62564

JOHN ERWIN MICHELFELDER,	:	
	:	COURT OF COMMON
Plaintiff,	:	PLEAS
	:	PHILADELPHIA
v.	:	COUNTY
	:	MAY TERM, 1996
THOMAS JEFFERSON UNIVERSITY et al.	:	NO. 1893
Defendants.	:	Cost# 080053

ORDER

AND NOW, this 31ST day of October, 1997, upon consideration of the Motion for Summary Judgement, and the briefs, exhibits and the record presented in support of the Motion, and ~~since Plaintiff has failed to produce evidence of facts essential to the cause of action and there are no genuine issues of material facts for trial~~ Plaintiff's Response it is hereby ORDERED that the Motion is GRANTED, and that judgement is entered for Defendants, Thomas Jefferson University, Dr. Wu, Dr. Cyrus Whaley, Dr. Reva Curry, Ms. Susan Reynolds and Mr. Lawrence Abrams. and against the Plaintiff.

By the Court:

"S_____"
Albert Sheppard,J

App.C

IN THE COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

RECEIVED
MAY 6 1998
CIVIL ADMINISTRATION

JOHN E. MICHELFELDER	:	MAY TERM 1996
v.	:	No. 1893
THOMAS JEFFERSON UNIVERSITY HOSPITAL, DR. CYRUS WHALEY, DR. REVA CURRY, DR. WU. SUSAN REYNOLDS and DR. LAWRENCE ABRAMS	:	Superior Court Docket No. 04990PHL97

.....

OPINION

SHEPPARD, JR., J. .....MAY 6, 1998

This opinion is submitted in support of this court's Order, dated October 31, 1997 granting defendants' Motion fof Summary Judgement. For the reasons stated. The appeal should be denied and that the Order affirmed.

Factual Background

John Erwin Michelfelder ("plaintiff") was admitted to the Thomas Jefferson University College of Allied Health Sciences, Department of Diagnostic Imaging, Multicompetency Program ("TJU") for the Fall semester, 1993. At the commencement of the, plaintiff was given a copy of the TJU Catalog for the College of Allied Health Sciences.1 This Catalog set forth information about the curriculum in the Diagnostic Imaging Program and the controlling grading requirements. A Memorandum explaining dismissal due to academic performance, dated September 15, 1993, was also given to plaintiff. 2 The Catalog and Memorandum made it clear that a"student receiving two grades of "D" or lower in Diagnostic Imaging Course work or required general studies courses within the same academic year...will be required to withdraw from the Diagnostic Imaging major." (See, Exhibit "A", Catalog, pg. 123, and Exhibit "B", Memorandum). The catalog further provided that:

> The College of Allied Health Sciences of Thomas Jefferson University reserves the right to amend any regulations, fees, conditions and courses described herein as circumstances may require without prior notice to persons who might thereby be affected. The provisions of this Catalog are not to be regarded as an irrevocable contract between the College and the students. [Emphasis added].

Exhibit "A" Catalog, inside cover.

1 Pertinent portions of this Catalog are appended to this Opinion and marked, Exhibit "A".

2. A true copy of this Memorandum is appended and marked Exhibit "B".

When plaintiff entered the College of Allied Health Sciences, Diagnostic Imaging Program in the Fall of 1993, the grading structure was a follows:

90-100 = A
80-89 = B
70-79 = C
60-69 = D
-60 = F

However, effective for the Fall, 1994 semester(plaintiff's third semester at TJU) the Department of Diagnostic Imaging changed its grading structure to the following:

93-100 = A
85-92.9= B
77-84.9= C
70-76.9= D
-70 = F

Plaintiff received notice of this change in grading protocol prior to the start of the fall semester. In addition, this new grade scale was promulgated in the syllabus for each course.

At the conclusion of the fall, 1994, academic semester, plaintiff received 3 grades of "D". Plaintiff was notified by letter dated December 29, 1994 that 3 grades of "D" required the Department to recommend academic dismissal, and that notification of this grade report was being forwarded to the Committee on Student Promotions. The Committee approved the recommendation of the Department faculty that the plaintiff be dismissed from the program because of inadequate academic performance. Although the plaintiff was dismissed from the Department of Diagnostic Imaging Program, he was not dismissed from the College.

Plaintiff choose not to apply for readmission to the Diagnostic Imaging Program as provided for in the Catalog, nor did he continue enrollment at the College. Instead, plaintiff wrote to Paul Drucker, President of Thomas Jefferson University, "demanding that all my moneys be refundede to me from the start of my entrance at your University, as well as book expenses," and threatening litigation. The Dean of the

College, Lawrence Abrams, Ed. D., responded, affirming the Committee's decision to dismiss plaintiff from the Program. Plaintiff wrote a second letter to President Drucker. Dean Abrams again responded. In this response, the Dean recommended the plaintiff consider the possibility of reapplying for readmission to the Department.

Plaintiff initiated no further contact with TJU until May 20, 1996, when he filed this lawsuit. On August 4, 1997 the defendants filed a Motion for Summary Judgement. This court granted that Motion by Order dated October 31, 1997, and plaintiff now appeals.

Discussion

I. The Standard For Granting Summary Judgement

This court may grant a motion for summary judgement if".....there is no genuine issue as to any material fact....., "or where" an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to cause of action...." Pa.R.C.P. 1035.2. This court recognizes that:

> [I]n considering a motion for summary judgement The court must examine the record in light most favorable to the non-moving party:....and that all doubts as to the existence of a genuine issue of material fact must be resolved in favor of the non-moving party.

Taylor v. Tukanowicz, 290 Pa, Super. 581, 585, 435 A.2d 181, 183 (1981)(citations omitted). The burden rests upon the party moving for summary judgement to demonstrate that there is no genuine issue of material fact. Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Sup. 225, 231, 464 A.2d 1313, (1983) (citations omitted). This court has reviewed the record in light of these principles.

II. Defendant's Decision to Dismiss Plaintiff For Academic Reasons Is Entitled To Deference And Should Not Be Disturbed.

Defendant, TJU, rightfully exercised its discretion and authority to dismiss plaintiff for his inability to achieve a satisfactory academic record. The United States Supreme Court has instructed that "[u]niversity faculties must have the widest range of discretion in making judgements as to the academic performance of students and their entitlement to promotion or graduation. "Brd of Curators of the Univ. of Mo. Horowitz, 435 U.S. 78, 96 n.6 (1977) (Powell, J; concurring). Accordingly, courts have appropriately afforded great deference to colleges and universities in reviewing decisions relating to a student's academic evaluation. See, e.g. Horowitz, 435 U.S. at 90; Mauriello v. University of Medicine & Dentistry of N.J., 781 F.2d 46, 50 (3d. Cir. 1986).

In Horowitz, supra, the Supreme Court reviewed the propriety of academic dismissal of a medical student for failure to perform adequately during the pediatrics rotation of a clinical segment of her medical studies. The Court held that "the decision to dismiss the student...rested on the academic judgement of the school officials that she did not have the necessary clinical ability to perform adequately as a medical doctor and was making insufficient progress toward that goal, " Horowitz, Supra., 435 U.S. at 89-90. The Court concluded that the judgement is "subjective." ID at 90. "Like the decision of an individual professor as to the proper grade for a student in his course, the determination whether to dismiss a student for academic reasons requires an expert evaluation of cumulative in formation and is not readily adapted to the procedural tool of judicial or administrative decision making. "Horowitz, supra., 435 U.S, at 90.

Similarly, the Supreme Court in Regents of the University of Michigan v. Ewing, 474 U.S. 214 , 106 S.Ct. 507, 99 L.ED. 2d 523 (1985), noted that courts are generally ill-equipped to review subjective academic appraisals of educational institutions and admonished courts to permit university faculties a wide range of discretion in making judgements as to the academic performance of their students. Also instructive is the determination of the court in Connelly v. University of

Vermont, 244 F.Supp. 156 (D. Vt. 1965), that a" medical school must be judged of the qualifications of its students to be granted a degree; Courts are not supposed to be learned in medicine and are not qualified to pass opinion as to the attainments of a student in medicine," Connelly v. University of Vermont, 244 F. Supp. 156, 160-161 (D. Vt. 1965).

Here, TJU rightfully exercised its discretion and authority in dismissing plaintiff for his failure to achieve a satisfactory academic record. Plaintiff had prior notice of the academic requirements he was expected to meet in that the TJU Catalog and the Memorandum(distributed to all students) explained the possible dismissal for inadequate academic performance. Both the Catalog and the Memorandum state, "that a student receiving two grades of "D" or lower in Diagnostic Imaging course work or required general studies courses within the same academic year...will be required to withdraw from the Diagnostic Imaging major."

The decision by defendant to issue an academic dismissal was neither arbitrary nor capricious, and conformed to the published policy of TJU. 3 In accordance with the procedures in place, plaintiff's unsatisfactory performance was reported to the Committee on Student Promotions.4 The Committee approved the recommendation from the faculty of the Department that the plaintiff be dismissed from the program due to the inadequate academic performance. Thus, TJU followed appropriate, published procedures when it exercised its discretion and authority to dismiss the plaintiff for academic reasons.

3. The Catalog provides, "Departmental regulation and actions regarding academic probation and dismissal require the review of the Committee on Student Promotions," Catalog, pp. 85.

4. The fact that the grading scale was adjusted does not affect this conclusion. This change was the prerogative and plaintiff had advance notice of the new grading structure.

It would be improvident and ill-advised for this court to intervene in the setting of academic standards and regulations of educational institutions and their implementation. Accordingly, this court submits that the conduct of TJU –neither arbitrary, nor capricious and implemented in a procedurally fair manner– is entiltled to deference and should not be disturbed by this court.

III. Plaintiff Has Failed To Establish A Breach Of Contract Claim Against The Defendant

Plaintiff alleges a cause of action for breach of contract, express and implied, asserting that by changing the grading structure and failing to place him on probation defendants breached a contract with him. This claim is without merit. After a review of the record, this court is unable to discover any evidence in support of a breach of contract, Admittedly, the grading structure was changed prior to plaintiff's third semester at TJU. But, TJU had clearly reserved the right to make this change.

The Catalog provided in pertinent part:

> The College of Allied Health Science of Thomas Jefferson University reserves the right to amend.. conditions, and courses described herein as circumstances may require...

This encompassed TJU's right to change the grading structure within the Diagnostic Imaging program. Plaintiff acknowledged the pre-enrollment information concerning the ciriculum in the grading structure was published prior to the semester and made known to all students including the plaintiff. The catalog applied to everyone student in the Program, not just the plaintiff.

In that the plaintiff was a student at TJU an implied contract existed between the plaintiff and TJU. Accordingly, "if admission to a professional school created an implied contract,

its academic requirements and the Promotional Guidelines were implied terms and plaintiff, admitted as a student when they were already in effect, was bound by them." Moire v. Temple Univ, School of Medicine, 613 F. Supp 1360 (E.D. Pa. 1985).

There is no evidence of record at TJU engaged in any conduct which could constitute a breech of contract. Indeed, TJU in this court's view met it contractual obligation to plaintiff in all respects. This court accepts the statement of counsel for TJU that "Jefferson has a duty to itself, its students and alumni, and to the medical profession as a whole, to promote only those students who have met the requisite qualifications" [5] Plaintiff has not established a claim for breach of contract.

IV. Plaintiff Has Failed to Establish A Claim of Discrimination

Plaintiff alleges in Count V of his complaint that "Jefferson wished to eliminate from their student body, white, male, Caucasions with traditional Christian religious beliefs." There is no evidence whatever to support this claim of discrimination. After a careful review of this record, this court was unable to discover any fact which hints, let alone demonstrates that TJU discriminated against Plaintiff in any manner. The change in grading structure applied to every student in Plaintiff's program and was announced at the outset of the semester. Plaintiff was treated no differently than any other similarly situated student. Simply stated, plaintiff was dismissed for failure to meet academic requirements. There was no discrimination.

5. Defendant's Brief in Support of Motion for Summary Judgement, at p. 10.

V. Plaintiff Has Failed To Establish A Claim of Negligence

Plaintiff alleges negligence in Count VI of his Complaint, averring that TJU "failed to maintain a qualified staff to conduct classes and teach courses." Yet , plaintiff fails to allege specific facts or offer any evidence to support this claim of negligence. Arguably, plaintiff's claim appears to fall within what has been labeled "educational malpractice", that is. A breach of agreement to provide a quality education, Cavalier v. Duff's Business Institute, 413 Pa. Super. 605 A.2d 397 (1992).

IN Cavalier, supra, students at a private court reporting school sued the school for breach of alleged contract implied contract to provide a quality education. Cavalier, 605 A. 2d at 397-98. Cavaliere court affirmed the trial court order dismissing the complaint on the ground that courts have refused to recognize a general cause of action for educational malpractice., whether or not framed in terms of a tort action, where the allegation is simply that the educational institution failed to provide a quality education. Id. At 403.

As in Cavaliere, supra, the difficulty here pressed is that plaintiff's claim amounts arguably to an allegation of a failure to provide a quality education, with more. Id. At 404. Such a complaint invites the kind of generalized review of the entire course of instruction that other courts have wisely refrained from engaging in. Again, a careful review of the record fails to uncover any facts that would support plaintiff's claim of negligence or "educational malpractice."

VI. Plaintiff Has Failed To Establish A Claim Of Competency.

Plaintiffs alleges conspiracy in Count VII of his Complaint, contending that defendants conspired to remove him from his course of study. Plaintiff maintains that TJU changed the grading structure in Diagnostic Imaging Department for the sole purpose of eliminating him from the roster because of his

Christian views. This claim appears to be no more than an unsubstantiated and bizarre belief of this plaintiff.

To prove a civil conspiracy, plaintiff must show that two more persons combined or agreed with intent to do an unlawful act or to do an otherwise lawful act by unlawful means. Thompson Coal Co. v. Pike Coal Co. , 448 Pa 198 211; 412 A.2d 466 , 472 (1979) (citations omitted). Plaintiff contends that defendants conspired to change the grading structure of the entire Diagnostic Imaging Program solely to eliminate him for his Christian views on abortion. Again, he has presented this court with no evidence that two or more persons agreed to do anything unlawful. There was no discrimination. There was no breach of contract. In that there is no unlawful act by any defendant demonstrated on the record, there can be no conspiracy.

Conclusion

In summary, this court granted Summary Judgement in favor of defendants on the basis that plaintiff failed to present any evidence of record which would create a genuine issue of material fact regarding any of the claims raised in his complaint.

For the reasons stated above, then, this court respectfully submits that its Order granting defendants's Motion for Summary Judgement should be affirmed.

BY THE COURT,

"S/ _____ "
ALBERT W. SHEPPARD, JR., J.v